

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

TIMOTHY J. UPCHURCH,

Plaintiff,

v.

TIMOTHY M. O'BRIEN,

Case No. 3:19-cv-00165

MARGARET M. O'BRIEN,

ALBERT D. MOUSTAKIS,

STEVEN M. LUCARELLI,

SHERIFF JOSEPH FATH,

DEPUTY SHERIFF ERIC NEFF,

and

DEPUTY SHERIFF RANDALL SCHNEIDER,

Defendants.

**DEFENDANTS TIMOTHY AND MARGARET O'BRIENS'
RULE 11 MOTION FOR SANCTIONS**

Defendants Timothy M. O'Brien and Margaret M. O'Brien (collectively, the "O'Briens"), by and through their attorneys, Axley Brynelson, LLP, by Lori M. Lubinsky and Jennifer M. Luther, hereby move the Court, pursuant to Fed. R. Civ. P. 11, to rule that the claims asserted against the O'Briens contained in the Complaint filed in the above-captioned matter are without basis in law and/or fact and/or were instituted solely to harass the O'Briens. Defendants further request that the Court impose sanctions on Plaintiff Timothy J. Upchurch and his counsel, Attorney Timothy A. Provis, for failing to withdraw this frivolous action after being served with a 21-day safe harbor letter.

The grounds for this Motion are as follows:

1. On May 6, 2019, the moving Defendants sent counsel for Plaintiff, Timothy A. Provis, a “safe harbor” letter pursuant to Fed. R. Civ. P. 11(c)(2) stating that a motion for sanctions would be filed if the Complaint is not dismissed with prejudice within 21 days. The “safe harbor” letter outlined the legal and factual deficiencies of the pleadings filed by Plaintiff. A true and correct copy of the May 6, 2019 correspondence is attached to the Affidavit of Jennifer M. Luther as **Exhibit 15**.

4. For the reasons set forth in the Brief in Support of Motion for Sanctions and Affidavits of Jennifer M. Luther and Timothy M. O’Brien, filed herewith, all of Plaintiff’s claims against the moving Defendants are objectively unreasonable, have no basis in law, and are solely meant to harass the moving Defendants.

5. It has been more than 21 days since the Motion was served and Plaintiff has not withdrawn his claims against the O’Briens in the above-captioned matter.

6. Defendants are entitled to an award of their reasonable attorney fees and actual costs incurred in bringing this motion.

Dated this 30th day of May, 2019.

AXLEY BRYNELSON, LLP

s/ Jennifer M. Luther

Lori M. Lubinsky (State Bar No. 1027575)

Jennifer M. Luther (State Bar No. 1065234)

Attorneys for Defendants Timothy M. O’Brien and
Margaret M. O’Brien

P.O. Box 1767

Madison, WI 53701-1767

Telephone: (608) 257-5661

Fax: (608) 257-5444

Email: llubinsky@axley.com

jluther@axley.com